

INCIDENT THAT AROSE ON SEPTEMBER 17, 2016 AND NO OTHER DATE, were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK**.

7. On or about September 17, 2016, at approximately 1:00A.M., in the vicinity of the inside of 1975 Sedgwick Avenue, County of Bronx, State of New York, the Defendants, **POLICE OFFICER WILLIAM CONCANNON OF THE 46TH NYPD PRECINCT, SHIELD #023380, TAX REG. #945604, POLICE OFFICER JOSHUA HEALY OF THE 46TH NYPD PRECINCT, SHIELD #24570, TAX REG. #954923, POLICE OFFICER CHRISTOPHER RICCIO OF THE 46TH NYPD PRECINCT, SHIELD #17103, TAX REG. #961164, POLICE OFFICER ANTHONY DONATO OF THE 46TH NYPD PRECINCT, SHIELD #07509, TAX REG. #948904, OTHER NEW YORK CITY POLICE OFFICERS ON ARREST #B16652649, WHOSE NAMES ARE NOT KNOWN AT THIS TIME N/H/A JOHN/JANE DOE II-III AS IT PERTAINS TO THE INCIDENT THAT AROSE ON SEPTEMBER 17, 2016 AND NO OTHER DATE**, jointly and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff, **BRIHEAN MILLER**, in an excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A SECOND CAUSE OF ACTION

8. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "7" with full force and effect as though set forth at length herein.
9. On or about September 17, 2016, at approximately 1:00A.M., in the vicinity of the inside of 1975 Sedgwick Avenue, County of Bronx, State of New York, the Defendants, **POLICE OFFICER WILLIAM CONCANNON OF THE 46TH NYPD PRECINCT, SHIELD #023380, TAX REG. #945604, POLICE OFFICER JOSHUA HEALY OF THE 46TH NYPD PRECINCT, SHIELD #24570, TAX REG. #954923, POLICE OFFICER CHRISTOPHER RICCIO OF THE 46TH NYPD PRECINCT, SHIELD #17103, TAX REG. #961164, POLICE OFFICER ANTHONY DONATO OF THE 46TH NYPD PRECINCT, SHIELD #07509, TAX REG. #948904, OTHER NEW YORK CITY POLICE OFFICERS ON ARREST #B16652649, WHOSE NAMES ARE NOT KNOWN AT THIS TIME N/H/A JOHN/JANE DOE II-III AS IT PERTAINS TO THE INCIDENT THAT AROSE ON SEPTEMBER 17, 2016 AND NO OTHER DATE**, jointly and severally did place Plaintiff, **BRIHEAN MILLER**, in imminent fear of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A THIRD CAUSE OF ACTION

10. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "9" with full force and effect as though set forth at length herein.
11. On or about September 17, 2016, at approximately 1:00A.M., in the vicinity of the inside of 1975 Sedgwick Avenue, County of Bronx, State of New York the Defendants, **POLICE OFFICER WILLIAM CONCANNON OF THE 46TH NYPD PRECINCT, SHIELD #023380, TAX REG. #945604, POLICE OFFICER JOSHUA HEALY OF THE 46TH NYPD PRECINCT, SHIELD #24570, TAX REG. #954923, POLICE OFFICER CHRISTOPHER RICCIO OF THE 46TH NYPD PRECINCT, SHIELD #17103, TAX REG. #961164, POLICE OFFICER ANTHONY DONATO OF THE 46TH NYPD PRECINCT, SHIELD #07509, TAX REG. #948904, OTHER NEW YORK CITY POLICE OFFICERS ON ARREST #B16652649, WHOSE NAMES ARE NOT KNOWN AT THIS TIME N/H/A JOHN/JANE DOE II-III AS IT PERTAINS TO THE INCIDENT THAT AROSE ON SEPTEMBER 17, 2016 AND NO OTHER DATE**, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and *unlawfully arrested* the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the County of Bronx and there charged him with the crimes on Docket No. 2016BX040489. The Plaintiff was thereafter held in custody over the course of approximately thirty-nine (39) hours until he was released on bail. The Defendants intentionally confined the Plaintiff

without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FOURTH CAUSE OF ACTION

12. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "11" with full force and effect as though set forth at length herein.
13. On or about September 17, 2016, at approximately 1:00A.M., in the vicinity of the inside of 1975 Sedgwick Avenue, County of Bronx, State of New York the Defendants, **POLICE OFFICER WILLIAM CONCANNON OF THE 46TH NYPD PRECINCT, SHIELD #023380, TAX REG. #945604, POLICE OFFICER JOSHUA HEALY OF THE 46TH NYPD PRECINCT, SHIELD #24570, TAX REG. #954923, POLICE OFFICER CHRISTOPHER RICCIO OF THE 46TH NYPD PRECINCT, SHIELD #17103, TAX REG. #961164, POLICE OFFICER ANTHONY DONATO OF THE 46TH NYPD PRECINCT, SHIELD #07509, TAX REG. #948904, OTHER NEW YORK CITY POLICE OFFICERS ON ARREST #B16652649, WHOSE NAMES ARE NOT KNOWN AT THIS TIME N/H/A JOHN/JANE DOE II-III AS IT PERTAINS TO THE INCIDENT THAT AROSE ON SEPTEMBER 17, 2016 AND NO OTHER DATE**, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and *unlawfully imprisoned* the Plaintiff, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately thirty-nine (39) hours before he

was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FIFTH CAUSE OF ACTION

14. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "13" with full force and effect as though set forth at length herein.
15. Upon information and belief, on or about September 17, 2016, and from that time until the dismissal of charges on or about December 1, 2016, before the Hon. S. Michels of the Criminal Court of the City of New York, Bronx County, Part FA, which was a favorable termination for the accused, by the Honorable Judge presiding at New York County Criminal Court, Defendants **THE CITY OF NEW YORK, POLICE OFFICER WILLIAM CONCANNON OF THE 46TH NYPD PRECINCT, SHIELD #023380, TAX REG. #945604, POLICE OFFICER JOSHUA HEALY OF THE 46TH NYPD PRECINCT, SHIELD #24570, TAX REG. #954923, POLICE OFFICER CHRISTOPHER RICCIO OF THE 46TH NYPD PRECINCT, SHIELD #17103, TAX REG. #961164, POLICE OFFICER ANTHONY DONATO OF THE 46TH NYPD PRECINCT, SHIELD #07509, TAX REG. #948904, OTHER NEW YORK CITY POLICE OFFICERS ON ARREST #B16652649, WHOSE NAMES ARE NOT KNOWN AT THIS TIME N/H/A JOHN/JANE DOE II-III AS IT PERTAINS TO THE INCIDENT THAT AROSE ON SEPTEMBER 17, 2016 AND NO OTHER DATE, maliciously prosecuted**, an innocent man without any probable cause whatsoever, by filing or causing a criminal court

complaint to be filed in the Criminal Court of the City of New York, New York County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York.

16. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.
17. The commencement of these criminal proceedings under Docket No. 2016BX0404849 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.
18. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A SIXTH CAUSE OF ACTION

(This Cause of action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

19. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "18" with full force and effect as though set forth at length herein.
20. Defendants, **POLICE OFFICER WILLIAM CONCANNON OF THE 46TH NYPD PRECINCT, SHIELD #023380, TAX REG. #945604, POLICE**

OFFICER JOSHUA HEALY OF THE 46TH NYPD PRECINCT, SHIELD #24570, TAX REG. #954923, POLICE OFFICER CHRISTOPHER RICCIO OF THE 46TH NYPD PRECINCT, SHIELD #17103, TAX REG. #961164, POLICE OFFICER ANTHONY DONATO OF THE 46TH NYPD PRECINCT, SHIELD #07509, TAX REG. #948904, OTHER NEW YORK CITY POLICE OFFICERS ON ARREST #B16652649, WHOSE NAMES ARE NOT KNOWN AT THIS TIME N/H/A JOHN/JANE DOE II-III AS IT PERTAINS TO THE INCIDENT THAT AROSE ON SEPTEMBER 17, 2016 AND NO OTHER DATE,, were at all times relevant, duly appointed and acting officers of the City of New York Police Department.

21. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.
22. Plaintiff, **BRIHEAN MILLER**, is and at all times relevant herein, a citizen of the United States and a resident of Kings County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.
23. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.
24. On or about September 17, 2016, at approximately 1:00A.M., in the vicinity of the inside of 1975 Sedgwick Avenue, County of Bronx, the Defendants, armed police, while effectuating the seizure of the Plaintiff, **BRIHEAN MILLER**, who had just been a victim of assault and battery from a civilian, including being shot at, did search, seize, assault and commit a battery and grab the person of the Plaintiff

without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned, assaulted, and had multiple batteries committed against him, without the Defendants possessing probable cause to do so. The police officer who actually processed the arrest of the Plaintiff, and/or communicated with the New York District Attorney's Office, was **POLICE OFFICER WILLIAM CONCANNON OF THE 46TH NYPD PRECINCT, SHIELD #023380, TAX REG. #945604** This officer arrested and process the Plaintiff, based on information alleged by **POLICE OFFICER JOSHUA HEALY OF THE 46TH NYPD PRECINCT, SHIELD #24570, TAX REG. #954923, POLICE OFFICER CHRISTOPHER RICCIO OF THE 46TH NYPD PRECINCT, SHIELD #17103, TAX REG. #961164, POLICE OFFICER ANTHONY DONATO OF THE 46TH NYPD PRECINCT, SHIELD #07509, TAX REG. #948904;** along with those named as "JOHN/JANE DOE" who assisted in the investigation that led to the arrest of the Plaintiff. Plaintiff is unaware of the name of the officer who actually placed him in handcuffs. This officer grabbed the person of the Plaintiff and handcuffed him. Plaintiff is unaware of the names of the officers, aside from those officers already named who were involved in the arrest, processing, or investigation leading to his arrest. The handcuffs were placed on Plaintiff's wrists so tight that Plaintiff's wrists turned red. Plaintiff was denied immediate medical attention despite having injuries sustained just prior to his arrest. Plaintiff was held in custody for approximately thirty-nine (39) hours prior to being released on bail, and was maliciously prosecuted for this incident. Due to the lack of probable cause, malice

can be inferred. Plaintiff missed approximately two (2) months of work as a result of this incident.

25. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights protected under the United States Constitution:

- a. Freedom from assault to his person;
- b. Freedom from battery to his person;
- c. Freedom from illegal search and seizure;
- d. Freedom from false arrest;
- e. Freedom from malicious prosecution;
- f. Freedom from the use of excessive force during the arrest process;
- g. Freedom from unlawful imprisonment;
- h. Freedom from loss of his liberty; and
- i. Freedom from the denial of prompt medical assistance to the Plaintiff.

26. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights protected under the Fourth and Fourteenth Amendments of the United States Constitution.

27. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A SEVENTH CAUSE OF ACTION

28. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "27" with full force and effect as though set forth at length herein.

29. Defendant, **CITY OF NEW YORK** has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.
30. **THE CITY OF NEW YORK** was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not be used where a criminal defendant is not resisting arrest.
31. **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:
1. Probable cause must be present before an individual such as the Plaintiff herein can be arrested.
 2. Excessive force cannot be used against an individual who does not physically resist arrest.
 3. An individual who sustains physical injury at the hands of the police or another, during the arrest process, or in close proximity thereto,

should receive prompt medical attention from the police or City of New York Emergency Medical Services, or New York City Fire Department EMS.

31. The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied him prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

AS AND FOR AN EIGHTH CAUSE OF ACTION

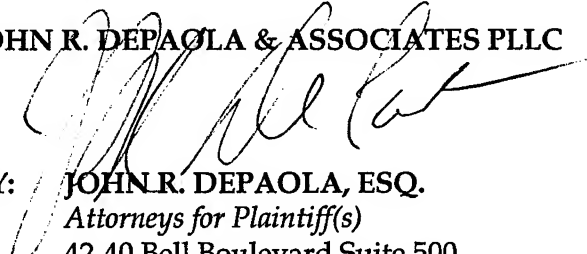
32. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "31" as it set forth at length herein.
33. Defendant **CITY OF NEW YORK** was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officer Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that these officers were not suitable to be hired and employed by the **CITY OF NEW YORK** and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

WHEREFORE, Plaintiff demands judgment against the Defendants, together with the costs and disbursements of this action in the amount of damages greater than the jurisdictional limit of any lower court where otherwise have jurisdiction, together with attorneys' fees and costs for bringing this case and punitive damages.

Dated: Bayside, New York
April 13, 2017

Yours, etc.

JOHN R. DEPAOLA & ASSOCIATES PLLC

BY:  **JOHN R. DEPAOLA, ESQ.**
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Bayside, New York 11361
(718) 281-4000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.:

-----X
BRIHEAN MILLER,

Plaintiff,

-against-

VERIFICATION


THE CITY OF NEW YORK, POLICE OFFICER
WILLIAM CONCANNON OF THE 46TH NYPD
PRECINCT, SHIELD #023380, TAX REG. #945604,
POLICE OFFICER JOSHUA HEALY OF THE 46TH
NYPD PRECINCT, SHIELD #24570, TAX REG.
#954923, POLICE OFFICER CHRISTOPHER RICCIO
OF THE 46TH NYPD PRECINCT, SHIELD #17103, TAX
REG. #961164, POLICE OFFICER ANTHONY
DONATO OF THE 46TH NYPD PRECINCT, SHIELD
#07509, TAX REG. #948904, OTHER NEW YORK CITY
POLICE OFFICERS ON ARREST #B16652649, WHOSE
NAMES ARE NOT KNOWN AT THIS TIME N/H/A
JOHN/JANE DOE II-III AS IT PERTAINS TO THE
INCIDENT THAT AROSE ON SEPTEMBER 17, 2016
AND NO OTHER DATE,

Defendants.
-----X

I, JOHN R. DEPAOLA, an attorney admitted to practice in the courts of New York State, state that I am a member of the firm of JOHN R. DEPAOLA & ASSOCIATES PLLC, the attorneys of record for Plaintiffs in the within action; I have read the foregoing and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by Plaintiff is because Plaintiff resides outside the county where deponent maintains his office.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: Bayside, New York
April 13, 2017



JOHN R. DEPAOLA, ESQ.

Index No. : -2017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

BRIHEAN MILLER,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER WILLIAM CONCANNON OF THE 46TH NYPD PRECINCT, SHIELD #023380, TAX REG. #945604, POLICE OFFICER JOSHUA HEALY OF THE 46TH NYPD PRECINCT, SHIELD #24570, TAX REG. #954923, POLICE OFFICER CHRISTOPHER RICCIO OF THE 46TH NYPD PRECINCT, SHIELD #17103, TAX REG. #961164, POLICE OFFICER ANTHONY DONATO OF THE 46TH NYPD PRECINCT, SHIELD #07509, TAX REG. #948904, OTHER NEW YORK CITY POLICE OFFICERS ON ARREST #B16652649, WHOSE NAMES ARE NOT KNOWN AT THIS TIME N/H/A JOHN/JANE DOE II-III AS IT PERTAINS TO THE INCIDENT THAT AROSE ON SEPTEMBER 17, 2016 AND NO OTHER DATE,

Defendants.

SUMMONS AND VERIFIED COMPLAINT

JOHN R. DEPAOLA & ASSOCIATES PLLC
BY: JOHN R. DEPAOLA, ESQ.
Attorney for Plaintiff(s)
42-40 Bell Boulevard, Suite 500
Bayside, NY 11361
Tel. (718) 281-4000

To: CORPORATION COUNSEL OF NEW YORK CITY

Attorney(s) for Defendants

Service of a copy of the within is hereby admitted.

Dated _____

Attorney(s) for